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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

No. 126.

CALVIN A. KENNEDY, PLAINTIFF IN ERROR,

vs.

ELLEN McKEE, CHRISTOPHER C. SLAUGHTER, CHAPIN M. SELAY, JAMES E. STONE, AND JOHN M. HOLT.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS.

FILED SEPTEMBER 28, 1888.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 7, 1891.

Moseley were merchants and partners residing in the counties of Grayson and Limestone, in the State of Texas, and transacting their business under the firm name of Moseley Bros. On and previous to said last-named date said firm owned and were offering for sale at retail stocks of merchandise in the said counties at the towns of Mexia and Denison, and on said date said firm was insolvent, and being insolvent the said S. P. Moseley and R. T. Moseley, on said date, for themselves and for said firm, in their own names and in the name of said firm, with the knowledge and consent of
4 their copartners, the said W. P. Moseley and the said F. P. Moseley, the former being sick and absent and the latter absent from the county, made, executed, and delivered to one W. E. Doyle, of said county of Limestone, a deed of assignment conveying to him all of the property of said firm and of said S. P. Moseley and R. T. Moseley, of every character and description, real, personal, and mixed, including, among other things, said stock of merchandise in the town of Denison, not including, however, such property as was exempted from forced sale by the constitution and laws of the State of Texas, which sale and assignment was made upon the expressed trust that the property so sold would be sold by the said W. E. Doyle and the proceeds thereof applied to the payment of the creditors of said firm. A copy of said deed of assignment is herewith filed as part of this petition and the original will be produced at the trial of this cause. The making of said deed of assignment had been discussed and agreed to by all the members of said firm before it was made, and was ratified immediately afterwards and before any adverse right had been acquired by each of said partners who did not sign the same individually.

That no property was owned by said firm or any of the members thereof not conveyed thereby except such as was exempted
5 from forced sale by the constitution and laws of the State of Texas.

That said stock of goods situated in said town of Denison was of the value of twelve thousand four hundred and ninety-six dollars and five cents, a bill of particulars of which was filed as part of plaintiff's original petition, marked Exhibit C, each item thereof being fifty per cent. greater in value than the value stated in said exhibit, and the aggregate value thereof being fifty per cent. greater than therein estimated; that from said 23 January, 1884, until the 26 day of January, A. D. 1884, the said W. E. Doyle was, as such owner and assignee of said stock of goods, in the actual and lawful possession thereof; that on, to wit, the 25 day of January, 1884, Wayman Crow, W. A. Hagardine, Hugh McKindrick, and E. J. Glasgow, a mercantile firm using the firm name Crow, Hargadine & Co., filed their suit in the United States circuit court for the northern district of Texas, at Dallas, against the said firm of Moseley Bros., to recover a debt alleged to be due them by said Moseley Bros. amounting to the sum of one thousand nine hundred and fifty-eight dollars and fifty-nine cents, and at the same time and in said suit the said Crow, Hargadine & Co. sued out of said United States circuit court a writ of original attachment, directed to the

said United States marshal for the northern district of Texas,
6 commanding him to levy upon and seize sufficient of the property of said firm of Moseley Bros. to make said sum of $1,958\frac{59}{100}$ and costs of suit, which were not over five hundred dollars in said case; that said writ of attachment came to the hands of the said James A. McKee as marshal as aforesaid; that at said date one J. M. Wright was the lawfully appointed and acting deputy of the said marshal, James A. McKee, and said writ of attachment was placed in his hands; that neither the said marshal or his deputy faithfully or otherwise performed the duty of said marshal by executing the said writ according to its command or by attaching property belonging to said Moseley Bros. or any member of said firm, but, on the contrary, without authority of law or of said writ, but pretending then and there to execute the commands of said writ of attachment and to be acting by virtue of the authority thereof, the said J. M. Wright, as such deputy marshal, on said 26 January, 1884, wrongfully and forcibly and without the consent of said W. E. Doyle seized and took into his possession said stock of goods situated in said town or city of Denison and excluded said Doyle and his successor from the possession of all of said stock of goods and deprived them of the value thereof, and they and each of them have ever since been deprived of the possession and value of said stock of goods.

7 That said James A. McKee was knowing to and approved and ratified said unlawful acts of his deputy, and as such marshal himself afterwards endorsed on said writ that he had levied upon and seized said stock of goods as the property of said firm of Mosely Bros., and that he had returned into said United States circuit court an inventory of the same, and that said goods were, as shown by said inventory, of the aggregate value of $8,330.70, which inventory so referred to is a copy of the same one herein referred to as an exhibit to this petition; said return, together with said writ of attachment, *were* filed in said court; that on the same day on which the aforesaid writ of attachment was issued another writ of attachment was issued out of the same court and against Moseley Bros., the same defendants, in the suit of Goodbar, White & Co, pl'ffs, for the sum of $1,088.80, which writ came to the hands of said marshal and was by him levied, through his said deputy, upon the same stock of goods that the said first-described writ was levied on, but subject to said first-described writ.

That save and except said two writs of attachment no writ or process was levied by said marshal or any of his deputies upon said goods.

That shortly after said levies a petition was filed by said Crow,
8 Hargadine & Co. in said United States court for the sale of said stock of goods so levied upon, predicated upon the statement that they were "perishable and in great danger of serious waste and decay," and alleging that the keeping of said goods until the trial of the case in which said writ of attachment was issued would be attended with such expense as to greatly lessen the amount likely to be realized therefor, and praying that said stock of

goods be sold at Denison after five days' notice. The said marshal attached to said petition his official certificate that the facts therein alleged were true, and that it would be for the interest of all concerned for said goods to be sold, adding that he was unable to procure insurance upon them.

In compliance with said application and certificate the United States judge for said district, at chambers, on the 13 February, 1884, granted the prayer of said petition and directed the marshal to sell said stock of goods on five days' notice as under execution, and pay the proceeds of such sale into court, to await the further orders of said court; and he, the said marshal, pretending to act by said authority, on the 8th day of March, A. D. 1884, after giving only five days' notice of the time, place, and terms of such sale by posting notices at three public places in said county of Grayson, one of
9 which was the court-house door of said county, sold said stock of goods in the city of Denison, at public outcry, in bulk, to the highest bidder, for cash, for the sum of four thousand nine hundred and twenty-four dollars and forty-four cents, which money was paid by said marshal into said United States court, and afterwards part of it was paid to the plaintiffs in said judgments, sufficient to satisfy them, including all costs therein incurred, after which a large surplus of said money, to wit, the sum of twelve hundred dollars, was left in the hands of the clerk of said court, which surplus was afterwards paid to the attorneys of Moseley, one of the members of said Moseley Bros.' firm and one of the defendants in said suit.

That after the levy of said writs of attachment as aforesaid the said W. E. Doyle resigned the trust aforesaid as assignee as aforesaid, whereby said trust became vacant for the want of an assignee, and, being so vacant, the judge of the county court of said county of Limestone, in the State of Texas, in vacation, on, to wit, the 27th day of September, A. D. 1884, after due notice, upon the petition of accepting creditors of said Moseley Bros. made in writing, *and* had entered in the minutes of the county court of said county of Limestone an order removing the said W. E. Doyle from said
10 assigneeship and appointing Calvin A. Kennedy, your petitioner, assignee of the estate of said Moseley Bros., under their said deed of assignment, in the place of said W. E. Doyle.

That petitioner accepted said appointment, and, in compliance with all the terms of said order appointing him, qualified as such assignee, and having given bond, as the law prescribes for such cases, which was accepted and approved by the proper officer, became and now is the lawful and acting assignee of said Moseley Bros. under said deed of assignment, and as such brings this suit.

That said W. E. Doyle, when he was appointed assignee as aforesaid, accepted said appointment and duly qualified under the law. The affidavit required by law was made to said deed of assignment by the said S. P. Moseley and R. T. Moseley, and said deed of assignment was duly filed and recorded in his office by the clerk of the county court of Limestone county on the 24th day of January, A. D. 1884, at 9 o'clock a. m.

That the act of said marshal, as well as of his deputy, in taking possession of said stock of goods or any part thereof was unlawful and wrongful, and his keeping them from the possession first
11 of said W. E. Doyle and afterwards of petitioner was wrongful and caused damage to the amount of twenty-four thousand dollars.

That said levies were in any event grossly and oppressively excessive, as was well known to said marshal and his deputy at the time of making the same, and, the goods being susceptible of ready division, that wrong might have been easily avoided.

That said stock of goods was knowingly inventoried by the said marshal and by his deputies at greatly less than its market value.

That the necessity of its sale, if there was any, was caused by the wrongful levy aforesaid, and the facts stated in said petition for the sale thereof were untrue, as was well known to said marshal.

That the sale of said goods by said marshal, as aforesaid, was made on insufficient notice both as to time and manner of publication, which were causes for the inadequate price paid for said goods at said sale.

That the sale of said stock in bulk rather than in parcels was another cause of their failing to bring their value; that in fact, after being wrongfully seized by said marshal and his deputy under an excessive levy, said causes resulted in a sacrifice of said stock of goods and their sale at much less than one-third of their
12 actual cash value at the time and place of their sale, a sacrifice that would have been greatly lessened if said marshal had stopped, even after said wrongful and excessive levies, at selling only enough of said goods to satisfy the debts, costs, and charges for which they were sold.

Wherefore petitioner sues and prays the usual process hereof and for judgment for his said damages, costs of suit, and such other and further relief as under the premises he may be found lawfully entitled to; and, as in duty, &c.

(Signed) THOS. J. GIBSON AND
LEAKE & HENRY,
Att'ys for Plaintiff.

(Endorsed:) No. 1027. Calvin A. Kennedy *vs.* Jas. A. McKee. Plaintiff's first amended original petition. Filed Feb'y 13, 1888. (Signed) A. J. Houston, clerk, by Jas. D. Adams, deputy.

EXHIBIT A.

Know all men by these presents that we, James A. McKee, Chapin M. Seley, James E. Stone, and John M. Holt, of the town of Waco, and Christopher C. Slaughter, of the town of Dallas, in the State of Texas, are held and firmly bound unto the United
13 States of America in the sum of twenty thousand dollars lawful money of the said United States, to be paid to the said United States; for which payment, well and truly to be made, we

bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Signed with our hands and sealed with our seals this second day of September, 1882.

The condition of the above obligation is such whereas the President of the United States hath, pursuant to law appointed the said James A. McKee to be marshal of the United States for the northern district of Texas, to have and to hold the same, with all the rights, privileges, and emoluments thereunto lawfully appertaining, for four years from the thirteenth day of July, 1882, unless sooner removed therefrom, as by a commission to him bearing date the thirteenth day of July, 1882, more fully appears:

Now, if the said James A. McKee, by himself and by his deputies, shall faithfully perform all the duties of the said office of marshal, then this obligation to be void; otherwise to remain in full force and virtue.

(Signed) JAMES A. McKEE.
" CHAPIN M. SELEY.
" JAMES E. STONE.
" JOHN M. HOLT.
" CHRISTOPHER C. SLAUGHTER.

Witness to the signatures of James A. McKee, Chapin M.
14 Seley, James E. Stone, and John M. Holt:
(Signed) J. H. FINKS.

Witness to the signature of Christopher C. Slaughter:
(Signed) EDWARD J. GANNON.

DALLAS, TEXAS, *September* 4, 1882.

This bond was this day submitted to me, with proof of the sufficiency of the sureties, and is by me approved, and the clerk of the district court will file and record this bond in the minutes of the district court, sitting at Dallas.

(Signed) A. P. McCORMICK,
U. S. Dist. Judge for the Northern District of Texas.

(Endorsed:) U. S. marshal's office. Bond. Filed and recorded Sept. 4, 1882. (Signed) J. H. Finks, clerk, by A. J. Houston deputy.

District Court of the United States for the Northern District of Texas, at Dallas.

I, J. H. Finks, clerk of the district court of the United States for the northern district of Texas, do hereby certify that the foregoing is a true and correct copy and transcript of the official bond of James A. McKee as United States marshal for the northern district of Texas; all of which appears from the records of said court now in my office.

In testimony whereof I hereunto set my hand and affix the
15 seal of said court, at Dallas, Texas, this 28th day of September, A. D. 1885.

J. H. FINKS,
Clerk U. S. District Court at Dallas, Texas.

(Endorsed:) Exhibit "A," filed as part of original petition in case Calvin A. Kennedy *vs.* James A. McKee *et al.*, in dist. court, Dallas Co., Texas. Filed Nov. 14, 1885. H. W. Jones, cl'k dist. court, Dallas county, by J. H. Stewart, deputy.

THE STATE OF TEXAS, }
Limestone County. }

Know all men by these presents that we, Mosely Brothers, a mercantile firm composed of W. P. Mosely, S. P. Mosely, R. T. Mosely, and F. P. Mosely & doing business in the cities of Mexia and Denison, said State, in consideration of the sum of one dollar to us in hand paid by W. E. Doyle, of said county and State, have this day transferred, assigned, & set over, and by these presents do transfer, assign, and set over, to the said W. E. Doyle, assignee, all of our property of every character & description, real and personal and mixed, a more complete & perfect description of which prop-
16 erty will hereafter and soon as it can be done *will* be filed with said assignee, in trust, nevertheless, and for the following purposes and uses, to wit:

Whereas, the said Moseley Bros. are justly indebted to various parties—a more complete description of the names and amounts due to each will be hereafter filed with said assignee—and which indebtedness we are unable to pay, and being desirous of securing to our said creditors an equitable and just distribution of our said property: Now, therefore, in consideration of the premises, we hereby authorize and empower the said W. E. Doyle to take full and exclusive control of the property herein conveyed and transferred, and to convert the same into money and apply the proceeds to the payment and satisfaction of our said indebtedness in the proportion of the respective claims of such of our creditors as shall accept these presents after paying all proper and necessary costs incident to the execution of this trust; and the said Doyle is hereby authorized and empowered to sign all the deeds, conveyances, acquittances, and receipts & to institute and defend any — all suits necessary and proper for the full execution of the trust herein created, provided, that there is reserved out of the operations of this instrument such
17 property as is exempt from forced sale under the constitution and laws of this State.

Witness our hands this January 23, 1884.

(Signed) S. P. MOSELEY.
" R. T. MOSELEY.
" MOSELEY BROS.

THE STATE OF TEXAS, }
Limestone County. }

Before me, Thomas J. Gibson, a notary public in and for said county, this day personally appeared S. P. Moseley and R. T. Moseley, known to me to be the persons whose names are subscribed to the foregoing instrument of writing, and severally acknowledged to me that they had executed and delivered the same for themselves and for the said firm of Moseley Brothers & for the purposes and considerations therein stated.

Witness my hand and seal of office this Jan'y 23, 1884.

[SEAL.] THOS. J. GIBSON,
N. P., L. C., Texas.

THE STATE OF TEXAS, }
Limestone County. }

I, W. P. Brown, county clerk for Limestone county, State of Texas, do hereby certify that the foregoing annexed instrument of
18 writing, bearing date 23d day of January, A. D. 1884, with its certificate of authentication, was filed in my office for record at 9 a. m. on the 24th day of Jan'y, A. D. 1884, and recorded at 10 a. m. on the 24th day of Jan'y, A. D. 1884, in Book W, pages 478 & 479, of deeds, county records of Limestone county, Texas.

In testimony whereof I hereunto subscribe my name and affix the impress of the seal of the county court of Limestone county, in the town of Groesbeck, Texas, on this the 24th day of January, A. D. 1884.

[SEAL.] (Signed) W. P. BROWN,
County Clerk for Limestone County, Texas,
By J. W. STEPHENS, *Deputy.*

(Endorsed:) No. 1027. W. E. Doyle, assignee Moseley Brothers. Filed for record Jan'y 24, 1884, at 9 o'clock a. m. W. P. Brown, clerk, by J. W. Stephens. Texas. Filed July 31, 1888. A. J. Houston, clerk, by J. D. Adams, deputy.

The State of Texas to the sheriff or any constable of Dallas county, Greeting:

You are hereby commanded to summon James A. McKee and Christopher C. Slaughter to appear before the district court of Dallas county, to be held at the court-house, in the city of Dallas, on the 2d Monday in Dec., A. D. 1885, then and there to answer the petition of Calvin A. Kennedy, assignee of Moseley Brothers, filed in said court on the 14th day of Nov., 1885, against
19 the said James A. McKee, Christopher C. Slaughter, Chapin M. Seley, James E. Stone, and John M. Holt for suit, said suit being numbered 5668, the nature of which demand is as follows, to wit: Plaintiff sue- and pray- judgment against defendants in the sum of $24,000.00, damages and value of goods, wares, and merchandise levied upon by James A. McKee as marshal. Said goods were levied upon as the property of Moseley Bros. on the 26th

of Jan'y, 1884, in the town of Denison, Grayson county, Texas; that said goods so levied upon by said marshal, James A. McKee, through his deputy, J. M. Wright, by virtue of writs of attachment issued out of the U. S. circuit court for the northern district of Texas, *was* not the property of said Moseley Brothers, but *was* in the possession of W. E. Doyle by deed of assignment from said Moseley Bros.; that said marshal, J. A. McKee, was known to this fact; that the act of said marshal, as well as his deputy, in taking possession of said goods was unlawful, & his keeping them from the possession of said W. E. Doyle & from petitioner was wrongful, to petitioner's damage aforesaid; wherefore pl'ff ask- judgment against def'ts for his damages aforesaid, costs, &c., &c., and you will deliver to the said James A. McKee and Christopher C. Slaughter a true copy of this citation.

20 Herein fail not, but have you then and there this writ showing how you have executed the same.

Witness H. W. Jones, clerk of the district court of Dallas county. Given under my hand and seal of office, at Dallas, this 5th day of Dec., 1885.

H. W. JONES,
Clerk Dist. Court, Dallas Co.,
By J. H. STEWART, *Dep-ty.*

Came to hand the 5th day of Dec., 1885, and executed the 8th day of Dec., 1885, by delivering to James A. McKee and C. C. Slaughter, the within-named defendants, in person a true copy of this writ.

W. H. W. SMITH,
Sheriff Dallas County,
By C. A. HASKELL, *Deputy.*

The State of Texas to the sheriff or any constable of McLennan county, Greeting:

You are hereby commanded to summon James E. Stone — John M. Holt to appear before the district court of Dallas county, to be held at the court-house, in the city of Dallas, on the 2 Monday in May, A. D. 1886, then and there to answer the petition of Calvin A. Kennedy, assignee of Mosely Brothers, filed in said court on the 14th day of Nov., 1885, against James A. McKee, Christopher C. Slaughter, Chapin M. Seley, James E. Stone, and John M. Holt for suit, said suit being numbered 5668, the nature of which de-

21 mand is as follows, to wit: Plaintiff sue- and pray- judgment against defendants in the sum of $24,000.00, damages and value of goods, wares, & merchandise levied upon by James A. McKee as marshal*l*. Said goods were levied upon as the property of Mosely Bros. on the 26th day of Jan'y, 1884, in the town of Denison, Grayson county, Texas; that said goods so levied upon by said marshal*l*, Jas. A. McKee, through his deputy, J. M. Wright, by virtue of writs of attachment issued out of the U. S. circuit court for the northern district of Texas, *was* not the *the* property of said Mosely Brothers, but *was* in the possession of W. E. Doyle by deed of assignment from said Mosely Bros.; that said marshal, J. A. McKee,

was known to this fact; that the act of said marshal, as well as his deputy, in taking possession of said goods was unlawful, & his keeping them from the possession of said W. E. Doyle & from petition' was wrongful, to petitioner'- damage aforesaid; wherefore pl'ff ask- judgment against def'ts for his damages aforesaid, costs, &c., &c. A certified copy of pl'ff's original petition accompanies this citation, to which reference is made for complete description of pl'ff's allegations; and you will deliver to said James E. Stone & John M. Holt a true copy of this citation, with each a certified copy of pl'ff's original petition hereto attached.

Herein fail not, but have you then and there this writ
22 showing how you have executed the same.

Witness H. W. Jones, clerk of the district court of Dallas county.

Given under my hand and seal of office, at Dallas, this 12th day of April, 1886.

H. W. JONES,
Clk Dist. Court, Dallas Co.,
By J. H. STEWART, *Dep-ty.*

Came to hand the 14th day of April, 1886, at 1 o'clock p. m., and executed the 16th day of April, 1886, by delivering to James E. Stone and John M. Holt, the within-named defendants, in person a true copy of this writ, with each a certified — of pl'ff's original petition.

W. T. HARRIS,
Sheriff McLennan Co., Texas.

The State of Texas to the sheriff or any constable of McLennan county, Greeting:

You are hereby commanded to summon Chapin M. Selay to appear before the district court of Dallas county, to be held at the court-house, in the city of Dallas, on the 2nd Monday in May, A. D. 1886, then and there to answer the petition of Calvin A. Kennedy, filed in said court on the 14 day of Nov., 1885, against James A. McKee, Christopher C. Slaughter, Chapin M. Selay, James E. Stone, and John M. Holt for suit, said suit being numbered 5668, the nature of which demand is as follows, to wit: Plaintiff sues and pray- judgment against defendants in the sum of $24,000.00, damages
23 and value of goods, wares, & merchandise levied upon by James A. McKee as marshal. Said goods were levied upon as the property of Mosely Bros. on the 26th of Jan'y, 1884, in the town of Denison, Grayson county, Texas; that said goods so levied upon by said marshal, through his deputy, J. M. Wright, by virtue of writs of attachment issued out of the U. S. circuit court for the northern district of Texas, *was* not the property of said Mosely Bros., but *was* in the possession — W. E. Doyle by deed of assignment from said Mosely Bros.; that said marshal*l* was known to this fact; that the act of said marshal*l*, as well as his deputy, in taking possession of said goods was unlawful, and his keeping them from the possession of said W. E. Doyle & from petitioner was wrongful, to

petitioner's damages aforesaid; wherefore pl'ff ask- judgment against def'ts for his damages aforesaid, costs, &c., &c. A certified copy of pl'ff'- petition accompanies this citation, to which reference is here made for complete description of pl'ff'- allegations; and you will deliver to the said Chapin M. Selay a true copy of this citation, with accompanying certified copy pl'ff's original petition. Herein fail not, but have you then and there this writ, showing how you have executed the same.

Witness H. W. Jones, clerk of the district court of Dallas county. Given under my hand and seal of office, at Dallas, this 19 day of April, 1886.

24 H. W. JONES,
Clerk Dist. Court, Dallas Co.,
By J. H. STEWART, *Deputy.*

Came to hand the 20th day of April—at 4 o'cl'k p. m.—1886, and executed the 22d day of April, 1886, by delivering Chapin M. Seley, the within-named defendant, in person a true copy of this writ, with accompanying certified copy pl'ff's petition.

W. T. HARRIS,
Sheriff McLennan County.

In District Court of Dallas County, Texas.

KENNEDY
vs.
JAMES A. MCKEE *et al.*

And now comes C. C. Slaughter, one of the def'ts in the above entitled and numbered cause, and except- to pl'ff'- petition as being insufficient in law; and of this he prays judgment of the court.

WRIGHT, WRIGHT & ECKFORD,
25 *Att'ys for C. C. Slaughter.*

And, specially excepting to pl'ff's petition, says — is not sufficient in law for the following reasons, to wit:

1st. Because the petition pretends to be an action on the official bond of defendant James A. McKee, as United States marshal for the northern district of Texas, for a supposed breach or violation of the terms of said bond, and fails to show in what way or manner said marshal or his deputies failed or refused or neglected to faithfully perform all the duties of said office of United States marshal.

2d. Because pl'ff seeks to recover against the alleged bondsmen of defendant James A. McKee without showing in what manner said parties are or become liable for any trespass committed by said James A. McKee or any of his deputies and without showing or alleging any fact or act done by said last-mentioned defendant by reason of which this def't became liable for any trespass committed by said J. A. McKee or his deputies or either of them.

3d. Because the petition does not show that at the time of the alleged trespass the bond sued upon was in full force and effect, or that the sureties thereon were liable for any amount by reason of

its breach, or that no previous recoveries had been had thereon,
26 or that the sureties on said bond were liable on the same to the extent of the sum sued for or any other amount whatever.

5th. Because said petition sets up no cause of action against this defendant and is vague, indefinite, and uncertain in all its material allegations.

6th. Because the title and claim as set up by pl'ff is fraudulent and void — to said goods, wares, & merchandise.

(Signed) WRIGHT, WRIGHT & ECKFORD,
Att'ys for C. C. Slaughter.

And now comes def't C. C. Slaughter, one of the def'ts herein, and denies all and singular the facts and allegations set forth and contained in pl'ff's petition; and of this he puts himself upon the country.

(Signed) WRIGHT, WRIGHT & ECKFORD,
Att'ys for C. C. Slaughter.

And, further answering herein, this def't says that at the time of the alleged and pretended trespass complained of by pl'ff the said J. A. McKee was United States marshal for the northern judicial district of Texas and was performing the duties of said office; that if any trespass was committed, which this def't denies, the same was done by J. A. McKee while executing certain writs of attachment issued out of the circuit court of the United States for the northern judicial district of the State of Texas, holding sessions at Dallas, Texas, in the cases of
27 Crow, Hargadine & Co. *vs.* Moseley Bros. and —— —— *vs.* Moseley Bros.; that said writs of attachment were issued under and by virtue of the laws of the United States providing for original attachment suits in said circuit court of the United States; that the property levied on by virtue of said writs was pointed out by the attorney and agent of pl'ffs in said suits as the property of the def'ts in said writs of attachments; that the property so attached was the property of said Moseley Bros., and that the pretended claim of pl'ff in this cause to said goods, wares, and merchandise is fraudulent and void, and was made for the express purpose of defrauding the creditors of said Moseley Bros. out of just debts due and owing them by said last-named parties; that said goods, wares, and merchandise so attached under and by virtue of said writs of attachments were subject thereto, all of which this def't is ready to verify.

(Signed) WRIGHT, WRIGHT & ECKFORD,
Att'ys for Def't C. C. Slaughter.

Filed Dec'r 18, 1885.
(Signed) H. W. JONES,
Cl'k Dist. Court, Dallas Co.

28 Dallas District Court, March Term, 1886.

CALVIN A. KENNEDY
vs.
JAMES A. McKEE.

Now comes above pl'ff, by att'y, and suggests and represents to the court that since the institution of this suit and before the trial thereof the def't, James A. McKee, has departed this life; that the cause of action in said suit is one which survives; that Ellen McKee is the legal executrix of said James A. McKee, and she resides in Dallas county, Texas. Wherefore pl'ff prays that the clerk of this court issue a *scire facias* for said executrix requiring her to appear and defend the above-entitled suit.

(Signed) LEAKE & HENRY,
Pl'ff's Att'ys.

Filed Feb'y 18th, 1886.
(Signed) H. W. JONES,
Cl'k Dist. Court, Dallas Co.

The State of Texas to the sheriff of Dallas county, Greeting:

Whereas, in the district court of Dallas county, during the present term of this court and on the 18th day of Feb'y, 1886, in a suit pending in said court wherein Calvin A. Kennedy is plaintiff
29 and James A. McKee *et al.* are defendants, No. 5668, the plaintiff in said suit filed his petition, suggesting the death of the defendant James A. McKee, and it appearing to the court that Ellen McKee is the legal executrix of said James A. McKee, and is a resident of Dallas county, Texas; therefore you are hereby commanded that you summon the said Ellen McKee to be and appear before the district court of Dallas county to be holden within and for the county of Dallas, at the court-house thereof, in the city of Dallas, on the 2d Monday in March, 1886, then and there to show cause, if any she may have, why she shall not be made a party defendant to said suit.

Herein fail not, but of this writ and how you have executed the same make due return according to law.

Witness H. W. Jones, clerk of the district court of Dallas county.

Given under my hand and seal of said court, *court* in the city of Dallas, this Feb'y 18th, 1886.

(Signed) H. W. JONES,
Cl'k Dist. Court, Dallas Co.

Came to hand Feb'y 18th, 1886. Executed February 23d, 1886, by delivering to Ellen McKee in person a true copy of this notice.

(Signed) W. H. W. SMITH, *Sheriff*,
By M. V. KIRBY, *Deputy.*

30 CALVIN A. KENNEDY vs. J. A. McKEE *et al.* } # 5668. Suit Pending in the Dist. Court of Dallas County.

To the Hon. Geo. N. Aldridge, judge of said —:

The petition of Mrs. Ellen McKee, who resides at Los Angeles, California, but who resided at the said county of Dallas at the date of the institution of this suit, respectfully shows—

That she is the *writ on* and executrix of the defendant James A. McKee, departed this life since the institution of this suit; that on the 25th day of January, 1884, the date of the alleged trespass complained of, the said James A. McKee was the marshal of the United States for the northern district of Texas, duly appointed, qualified, and acting as such, and that the defendant- C. C. Slaughter, C. M. Seley, James E. Stone, John M. Holt, were the sureties on the official bond of the said James A. McKee as marshal aforesaid; that said bond was duly approved by the Hon. A. P. McCormick, United States district judge, on Sept. 4th, 1882; that this is a suit against the said James A. McKee and sureties on his official bond for an alleged breach of the conditions thereof, and that the defendants have a defense arising under the laws of the United States, and that this is a suit arising under the laws of the United States.

31 Your petitioner shows that the matter and amount in dispute in this cause exceeds the sum of five hundred dollars, exclusive of costs. Petitioner further shows that at the time of the alleged trespass the said James A. McKee was the United States marshal for the northern district of Texas, duly qualified and acting as such; and your petitioner offers herewith a bond, with good and sufficient surety, for her entering in the circuit court of the United States for the northern district of Texas, on the first day of its next session, a copy of the record in this suit, and for paying all costs that may be awarded by said circuit court if said court shall hold that this suit was wrongfully or improperly removed thereto; and she prays this honorable court to proceed no further herein, except to make the order of removal required by law and to accept the said surety and bond and to cause the record herein to be removed into said circuit court of the United States for the northern district of Texas; and she will ever pray.

(Signed) CRAWFORD & CRAWFORD,
Att'y for Mrs. McKee.

I, M. L. Crawford, being sworn, says I am a member of the firm of Crawford & Crawford, attorneys for the petitioner herein, and that the matters stated in the foregoing petition are true as I verily believe.

32 (Signed) M. L. CRAWFORD.

Sworn to and subscribed before me this June 22, 1886.
(Signed) H. W. JONES,
Clerk Dist. Court, Dallas Co.

Filed June 22, 1886.
(S'g'd) H. W. JONES,
Clk Dist. Court, Dallas Co.

Know all men by these presents that I, Ellen McKee, as principal, and M. L. and W. L. Crawford, as sureties, are held and firmly bound unto C. A. Kennedy in the penal sum of three hundred dollars; the payment whereof, well and truly to be made, unto the said C. A. Kennedy, his heirs and assigns, we bind ourselves, our heirs, representatives, and assigns, firmly by these presents. Yet upon these conditions: The said Ellen McKee having petitioned the dist. court of Dallas county, Texas, for the removal of a certain cause therein pending, wherein C. A. Kennedy is plaintiff and Ellen McKee, executrix of J. A. McKee, *et al.* are defendants, to the circuit court of the United States in and for the northern district of Texas: Now, if the said Ellen McKee, your petitioner, shall enter in the said circuit court of the United States on the first day of its
33 next session a copy of the record in said suit, and shall well and truly pay all costs that may be awarded by said circuit court if said court shall hold that said suit was improperly removed thereto, then this obligation to be void; otherwise to remain in full force.

Witness our hands this June 22, 1886.
(Signed) ELLEN McKEE,
Per CRAWFORD & CRAWFORD.
W. L. CRAWFORD.
M. L. CRAWFORD.

Approved June 22, 1886.
(Signed) H. W. JONES,
Clk Dist. Court, Dallas Co.

Filed June 22, 1886.
(Signed) H. W. JONES,
Clk Dist. Court, Dallas Co.

TUESDAY, *June* 22, 1886.

CALVIN A. KENNEDY *vs.* J. A. McKEE *et al.* } = 5668.

This day came on to be heard the petition and bond of the defendant Mrs. Ellen McKee to remove this cause into the circuit court of the United States for the northern district of Texas, at Dallas, and, the said petition and bond being presented to the court, it is ordered that the petition be granted and the surety on said bond accepted. It is therefore considered by the court and
34 so ordered that this court proceed no further in this case and that this case be removed into the circuit court of the United

States for the northern district of Texas, at Dallas, and that the clerk of this court make out a certified transcript of all the original papers and proceedings had in this cause and deliver the same to the clerk of said court.

In U. S. Circuit Court for the Northern District of Texas, at Dallas.

CALVIN KENNEDY
vs.
JAMES A. MCKEE *et al.* } No. 1027.

Now come the defendants Ellen McKee, C. M. Seley, J. M. Holt, & J. E. Stone & C. C. Slaughter, by counsel, and, leave of the court first had & obtained, file this as their first amended original answer in lieu of their original answers filed herein on the 14 day of May, 1886; and for such amendment these defendants say:

1st. That the matters and things alleged in plaintiff's petition in manner and form as therein alleged are insufficient in law for the plaintiff to have and maintain his action, and hereof these defendants pray judgment of the court.

35 2nd. And these defendants, specially excepting to plaintiff's petition, say that it is insufficient in law in the following express particulars:

First. Because the deed of assignment exhibited with plaintiff's petition and upon which plaintiff's whole cause of action purports to be based on its face shows that same was only signed by S. P. Moseley & R. T. Moseley, two members of the copartnership firm of Moseley Brothers, a firm composed of W. P. Moseley, S. P. Moseley, R. T. Moseley, and F. P. Moseley, and said assignment purports to be the act of said copartnership of Moseley Brothers, and said deed of assignment is void because it is not competent, as a matter of law, for one or more partners to make an assignment for the benefit of creditors binding on a copartnership & which would pass the property of the firm, because not within the scope of the copartnership business.

Second. Because an assig-ment made by two of the partners only could not be ratified by the partners not signing or executing same, so as to interfere with rights of creditors occurring & taking place before such ratification, and any pretended ratification which would operate on an assignment of real estate could not take place by parol or parol ratification.

Third. Because said deed of assignment, being made by said
36 two partners of the copartnership of Moseley Brothers & not being executed & signed by the partners W. P. Moseley & F. P. Moseley, could not and does not on its face purport to convey & pass the individual & separate property of said copartners, W. P. & F. P. Moseley, & for this reason said assignment is inoperative & void upon its face as a matter of legal construction.

Fourth. Because said deed of assignment on its face does not show it was made by said assignors Moseley Brothers as insolvent debtors

or by them even in contemplation of insolvency, and of said several exceptions these defendants pray judgment of the court.

(Signed) CRAWFORD & CRAWFORD &
CLARK & DYER,
WRIGHT & WRIGHT,
Att'ys for Def'ts Ellen McKee, C. M. Seley,
J. M. Holt & J. E. Stone, C. C. Slaughter.

3rd. And answering herein, if so required, these defendants come and deny all & singular the averments and allegations in plaintiff's petition contained; & hereof they put themselves upon the country.

(Signed) CRAWFORD & CRAWFORD &
CLARK & DYER,
WRIGHT & WRIGHT,
37 *Att'ys for Def'ts Ellen McKee, C. M. Seley,*
J. M. Holt & J. E. Stone, C. C. Slaughter.

(Endorsed:) No. 1027. Kennedy *vs.* McKee *et al.* 1st amended orig. ans. of def'ts, McKee, C. M. Seley, J. M. Holt, & J. E. Stone. Filed May 25, 1888. (Signed) A. J. Houston, clerk.

From the Minutes, May Term, 1888.

FRIDAY, *May* 25, 1888.

CALVIN A. KENNEDY
vs.
JAMES A. McKEE *et al.* } No. 1027.

On this the 25th day of May, 1888, this cause being called for trial, come the parties, plaintiff & defendants, each appearing by counsel; & thereupon come on to be heard & considered by the court defendants' general and special demurrers contained in their first amended original answer filed herein May 25, 1888; and the court, after having heard said demurrers and arguments of counsel thereon and being fully advised, is of the opinion that the law on said demurrers *are* with the defendants. Accordingly, therefore, ordered and adjudged by the court that defendants' said demurrers be, and the same are hereby, sustained; and said demurrers
38 going to the foundation of plaintiff's cause of action, and plaintiff declining in open court to amend, therefore ordered & adjudged by the court that plaintiff take nothing by his action, and that the same be dismissed, and that defendants go hence without day and have and recover of plaintiff all costs of this suit, for which let execution issue.

To which ruling of the court plaintiff in open court excepted.

39 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the circuit court of the United States for the northern district of Texas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you

or some of you, between Calvin A. Kennedy, plaintiff, and Ellen McKee, Christopher C. Slaughter, Chapin M. Selay, James E. Stone, and John M. Holt, defendants, a manifest error hath happened, to the great damage of the said Calvin A. Kennedy, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

The Seal of the U. S. Circuit Court, Northern Dist. Texas, Dallas.

Witness the Honorable Samuel F. Miller, senior associate justice of the said Supreme Court, the 19th day of June, in the year of our Lord one thousand eight hundred and eighty-eight.

A. J. HOUSTON,
Clerk of the Circuit Court of the United States for the Northern District of Texas, at Dallas,
By JAS. D. ADAMS, *Deputy.*

Allowed by—
A. P. McCORMICK,
U. S. Dist. Judge, N. D. of Texas.

[Endorsed:] 12. No. 1027. Calvin A. Kennedy *v.* Ellen McKee, Christopher C. Slaughter, Chapin M. Selay, James E. Stone, John M. Holt. Writ of error. Filed July 2, 1888. A. J. Houston, clerk, by Jas. D. Adams, dep'ty.

40 Know all men by these presents that we, Calvin A. Kennedy, as principal, and —— ——, as sureties, are held and firmly bound unto Ellen McKee, Christopher C. Slaughter, Chapin M. Seley, James E. Stone, and John M. Holt in the full and just sum of five hundred dollars, to be paid to the said Ellen McKee, Christopher C. Slaughter, Chapin M. Seley, James E. Stone, and John M. Holt, their certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this — day of June, in the year of our Lord one thousand eight hundred and eighty-eight.

Whereas lately, at a term of the United States circuit court for the northern district of Texas, at Dallas, in a suit depending in said court between Ellen McKee, Christopher C. Slaughter, Chapin M. Seley, James E. Stone, and John M. Holt, as defendants, and Calvin A. Kennedy, as plaintiff, a judgment was rendered against the said

Calvin A. Kennedy, and the said Calvin A. Kennedy having obtained a writ of error and filed a copy thereof in the clerk's
41 office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to Ellen McKee, Christopher C. Slaughter, Chapin M. Seley, James E. Stone, and John M. Holt, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next:

Now, the condition of the above obligation is such that if the said Calvin A. Kennedy shall prosecute his suit to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in presence of—

(Signed)	CALVIN A. KENNEDY.	[SEAL.]
"	J. L. SMITH.	[SEAL.]
"	D. F. HUGHES.	[SEAL.]

Approved by—
(S'g'd) A. P. McCORMICK,
U. S. Dist. Judge, N. D. of Texas.

THE STATE OF TEXAS, }
Limestone County. }

Before me, C. T. Harris, a notary public in and for Limestone county, Texas, on this day personally appeared J. L. Smith & D. F. Hughes, whose names are subscribed to the foregoing bond, and, being by me first duly sworn, depose and say each for him-
42 self that he has property situate in said county & State subject to execution in excess of the sum of five hundred dollars.

Sworn to & subscribed before me June 16, 1888.

(Signed) C. T. HARRIS,
[SEAL.] *Notary Public, Limestone Co., Texas.*

I certify that the foregoing bond is a good one for five hundred dollars.

June 16, 1888.
(Signed) THOS. J. HARRIS,
Att'y of Record for Plaintiff.

Endorsed: No. 1027. Calvin A. Kennedy *v.* Ellen McKee, Christopher C. Slaughter, Chapin M. Seley, James E. Stone, John M. Holt. Writ of error bond. Filed July 2, 1888. (Signed) A. J. Houston, clerk, by James D. Adams, deputy.

43 The United States of America to Ellen McKee, Christopher C. Slaughter, Chapin M. Selay, James E. Stone, and John M. Holt, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on

the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Texas, wherein Calvin A. Kennedy is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable A. P. McCormick, judge of the circuit court of the United States, this 19th day of June, in the year of our Lord one thousand eight hundred and eighty-8.

A. P. McCORMICK,
U. S. Dist. Judge, N. Dist. of Texas.

44 [Endorsed:] 14. No. 1027. Calvin A. Kennedy *v.* Ellen McKee, Christopher C. Slaughter, Chapin M. Selay, James E. Stone, John M. Holt. Citation in error. We hereby accept service of within citation and waive copy this July 1st, 1888. Crawford & Crawford, for Mrs. McKee; Wright & Wright, att'ys for C. C. Slaughter; Chapin M. Selay, James E. Stone, & John M. Holt, by Clark, Dyer & Bolinger, their att'ys, att'ys of record for defendants in error.

45 In the United States Circuit Court for the Northern District of Texas, at Dallas.

CALVIN A. KENNEDY
vs.
ELLEN McKEE, CHRISTOPHER C. SLAUGHTER, CHAPIN M. SELEY, JAMES E. STONE, and JOHN M. HOLT. } No. 1027.

And now comes Calvin A. Kennedy, plaintiff, by attorney, and says the court committed error upon the trial of this cause by sustaining the demurrer of the defendants to plaintiff's original amended petition and dismissing plaintiff's suit.

(Signed) LEAKE AND HENRY,
Att'ys for Plaintiffs.

Endorsed: No. 1027. Calvin A. Kennedy *vs.* Ellen McKee, Christopher C. Slaughter, Chapin M. Seeley, James E. Stone, and John M. Holt. Assignment of errors. Filed July 11, 1888. (Signed) A. J. Houston, clerk, by Jas. D. Adams, deputy.

46 In the Circuit Court of the United States for the Northern District of Texas, at Dallas.

I, A. J. Houston, clerk of the United States circuit court for the northern district of Texas, at Dallas, do hereby certify that the foregoing is a full, true, and correct transcript of the proceedings had in case No. 1027 and styled Calvin A. Kennedy *vs.* James A. McKee *et al.*, all of which appears from the records of said court now in the clerk's office.

The Seal of the U. S. Circuit Court, Northern Dist. Texas, Dallas.

In testimony whereof I hereunto set my hand and affix the seal of said court, at Dallas, Texas, this 18th day of September, A. D. 1888, and of the Independence of the United States of America the 113th year.

A. J. HOUSTON,
Clerk of said Court.

[Endorsed:] No. 1027. United States circuit court, northern district of Texas, at Dallas. Calvin A. Kennedy *vs.* Jas. A. McKee *et al.*

Endorsed on cover: N. Texas C. C. U. S. No. 126. Calvin A. Kennedy, plaintiff in error, *vs.* Ellen McKee, Christopher C. Slaughter, Chapin M. Selay, James E. Stone, and John M. Holt. Filed September 28, 1888.

Office Supreme Court U.
FILED,
OCT 5 1891
JAMES H. MCKENNEY
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

NO. 126.

CALVIN A. KENNEDY, PLAINTIFF IN ERROR,

vs.

ELLEN McKEE, ET AL., DEFENDANTS IN ERROR.

SAWNIE ROBERTSON,

~~Attorney for Appellant.~~

Counsel for Pl'ff in Error.

John F. Worley, Stationer and Printer, Dallas, Texas.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

NO. 126.

CALVIN A. KENNEDY, PLAINTIFF IN ERROR,

vs.

ELLEN McKEE, ET AL., DEFENDANTS IN ERROR.

W. P. Moseley, S. P. Moseley, R. T. Moseley and F. P. Moseley were merchants and partners transacting business at the towns of Mexia and Denison (some 200 miles apart), in the State of Texas, under the firm name of "Moseley Bros."

On the 23d day of January, 1884, S. P. Moseley and R. T. Moseley, acting for themselves and the firm, made to one W. E. Doyle a general assignment of all of the property belonging to the firm by an instrument in writing, signed by said L. P. Moseley and R. T. Moseley with their own and the firm name (see page 7 of the record.) The property was delivered to the assignee, but was subsequently seized and sold by the United States Marshal, under and by virtue of writs of attach-

ment, issued in suits brought against Moseley Bros. by certain of their creditors.

Afterwards Doyle resigned, and Calvin A. Kennedy was duly appointed assignee in his stead. This suit was brought by Kennedy upon the marshal's bond. His petition, in addition to the foregoing facts, and the execution of the marshal's bond, charged that at the date of the execution of said deed of assignment, the Mosely Bros. were offering for sale, by retail, said two stocks of merchandise, and that they were then insolvent; that said assignment was made by S. P. Moseley and R. T. Moseley, for themselves and for said firm, "with the knowledge and consent of their co-partners, the said W. P. Moseley and F. P. Moseley, one of whom it was alleged was sick and absent, and the other one absent from the county (Tr.,p. 2); that the making of the said deed of assignment had been discussed and agreed upon by all of the members of said firm before it was made, and that it was ratified immediately afterwards by each of the partners, who did not sign it, and before any adverse right had been acquired; that no property was owned by said firm nor by either of the members thereof not conveyed by said assignment, except such as was exempt from forced sale (Tr., pp. 1-5.)

A general demurrer was sustained to the petition and the cause was dismissed. (Tr., p. 17.)

The plaintiff assigned this judgment of the court as error. The provisions of the assignment law of the State of Texas affecting the issue, read as follows (Acts 1879, p. 57):

SECTION 1. "Every assignment made by an insol-

vent debtor, or in contemplation of insolvency, for the benefit of his creditors, shall provide, except as herein otherwise provided, for a distribution of all of his real and personal estate other than that which is by law exempt from execution, among all his creditors in proportion to their respective claims, and however made or expressed, shall have the effect aforesaid, and shall be construed to pass all such estate, whether specified therein or not."

SEC. 3. "Any debtor desiring to do so, may make an assignment for the benefit of such of his creditors only as will consent to accept their proportional share of his estate, and discharge him from their respective claims, and in such cases the benefits of the assignment shall be limited and restricted to the creditors consenting thereto, the debtor shall thereupon stand and be discharged from all further liability to such consenting creditors on account of their respective claims, and when paid they shall execute and deliver to the assignee for the debtor, a release therefrom."

The only ground upon which the invalidity of the assignment in controversy can be asserted is the failure to embrace in it the private property of all of the members of the firm as well as the partnership property.

It is contended in support of the judgment of the Circuit Court that it was held by the Supreme Court of Texas in the case of Donaho vs. Fish Bros. & Co. (58 Tex., 167) that no assignment is good under the Texas statute unless it conveys the whole of the property of the partnership and of every member thereof not exempt from forced sale.

There is an expression in the opinion in that case that gives some color to this claim.

But an examination of the case will show that the assignment then before the court provided for releases by the creditors, which the one now in controversy does not do.

The distinction in this respect between the two classes of assignments is apparent.

When a release is exacted of a creditor, the whole of the property that is subject to the demands of the creditor should be surrendered by the assignment.

On the other hand, when no release is exacted—when the creditor surrenders no right or remedy—no good reason exists why the assignment should not stand good for such property as it conveys for the benefit of all of the creditors alike rather than be subjected alone to the demands of a single attaching creditor.

The doctrine contended for has not been announced by the Supreme Court of Texas in a single case where the assignment in question was like the one now before the court—one for the equal benefit of all creditors without exacting a release.

Upon the contrary, every case subsequent to Donaho vs. Fish Bros. & Co. has carefully limited the rule to assignments that exact releases.

In the case of Baylor county vs. Craig (69 Texas, 332), it is said: "In Donaho vs. Fish Bros. & Co., this court held that an assignment requiring releases made by a member of a firm in the firm name and by himself individually, but not joined in by his co-partners, is invalid as to creditors."

In the case of Turner vs. Douglass (77 Texas, 620), it is said: "The act regulating assignments provides for two descriptions of assignment by an insolvent debtor; one providing for the distribution of the whole of his estate among all of his creditors; the other for its distribution among such of his creditors only as will consent to accept their proportional part and discharge him from their claims. 'A number of cases of assignments' of the description last named, (providing for the discharge of the debtor), made by or for firms, but where all of the members of the firm did not join in the execution of the instrument, have been before this court and they have been held inoperative because all of the members of the firm did not join in making them."

Authorities:

Still vs. Foeke & Wilkins, 66 Texas, 271.
Coffin vs. Douglas, 61 Texas, 410.
Shoe Co. vs. Ferrell, 68 Texas, 639.
Baylor County vs. Craig (supra.)

It is respectfully submitted that the judgment of the Circuit Court should be reversed.

SAWNIE ROBERTSON,
~~*Attorney for Appellant.*~~
Counsel for Plff in Error